

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY MORABITO,

Plaintiff Below-
Appellant,

v.

BOARD OF EDUCATION OF THE
SMYRNA SCHOOL DISTRICT, and
the SMYRNA SCHOOL DISTRICT,

Plaintiff Below-
Appellee.

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§ No. 518, 2010

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§ Court Below—Superior Court

§ of the State of Delaware,

§ in and for Kent County

§ C.A. No. 09A-09-005

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Submitted: March 25, 2011

Decided: May 16, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices

ORDER

This 16th day of May 2011, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Anthony Morabito, filed this appeal from the Superior Court's decision affirming a decision of the Smyrna School District Board of Education ("the Board") to terminate Morabito's employment as a teacher on the ground of neglect of duty. We find no merit to Morabito's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Morabito was a high school math teacher in the Smyrna School District ("the District"). He was in his fourth year of

employment during the 2008-09 school year. Morabito taught three Algebra I classes and three Integrated Math classes at the 9th Grade Academy, which was physically located in the Smyrna Middle School. Morabito team-taught one of his Integrated Math classes with another teacher. On April 9, 2009, Morabito fell and injured himself while leaving work. He remained out of work due to his injuries through May 2009. During that time period, the District notified Morabito that it intended to terminate his employment at the end of the 2008-09 school year for willful and persistent insubordination, incompetence, and/or neglect of duty.

(3) Morabito requested a hearing before the Board. A closed hearing was held before a hearing officer, who issued a report on September 2, 2009. Morabito was represented by legal counsel at that hearing. The hearing officer found that there was not sufficient evidence to find that Morabito had been willfully and persistently insubordinate or that he was incompetent. The hearing officer did find sufficient evidence, however, to conclude that Morabito had neglected his duties. Thus, the hearing officer recommended that Morabito be terminated. The Board approved and adopted the hearing officer's report on September 16, 2009. Morabito, through his counsel, filed an appeal to the Superior Court.

(4) In his opening brief on appeal to the Superior Court, Morabito raised a single argument claiming that the Board had erred in concluding that there was substantial evidence in the record to support the termination of his employment for neglect of duty. The Superior Court carefully reviewed the 1200-page record,

which included the testimony of twelve District witnesses and over forty exhibits, as well as the parties' arguments on appeal. The Superior Court concluded that there was substantial evidence in the record to support the Board's finding that Morabito on many occasions had failed to perform the responsibilities of a ninth grade math teacher in the District. Accordingly, the Superior Court affirmed the Board's judgment. Morabito, acting pro se, filed an appeal from the Superior Court's judgment to this Court.

(5) Morabito enumerates sixteen issues in his opening brief on appeal. Most of these issues, including his contentions that that Board considered improper or incomplete evidence and his allegations that his constitutional rights under the First, Seventh, and Eighth Amendments were violated, were not raised to the Superior Court in the first instance and thus will not be considered by this Court for the first time on appeal.¹ To the extent Morabito challenges the legal standard of "neglect of duty" applied by the Superior Court and the sufficiency of the evidence presented against him, we consider those claims below.

(6) When reviewing a decision of the Board, Section 1414 of Title 14 of the Delaware Code provides that the reviewing court "shall decide all relevant questions of law and all other matters involved, and shall sustain any board action, findings and conclusions supported by substantial evidence."² Substantial

¹ Del. Supr. Ct. R. 8 (2011).

² DEL. CODE ANN. tit. 14, § 1414 (2007).

evidence means such relevant evidence that a reasonable person might accept as adequate to support a conclusion.³ Substantial evidence is more than a scintilla but less than a preponderance of the evidence.⁴ On appeal from an adverse decision, the burden is on the teacher to establish that the Board's decision was not supported by substantial evidence.⁵

(7) To the extent Morabito suggests that the hearing officer, the Board, and/or the Superior Court applied the wrong standard in concluding that his termination was justified because of a "neglect of duty," we find no merit to his contention. While the teacher termination statute⁶ does not define the term "neglect of duty," this Court has defined it to mean "the failure to do something that is required to be done in connection with a person's employment."⁷ This standard was applied by the hearing officer, the Board, and the Superior Court.

(8) The gist of Morabito's argument is that there was not substantial evidence to support a finding of neglect of duty because the duties that Morabito was charged with neglecting were not contained in writing and thus he could not be found to have willfully refused to perform his duties. We disagree. The hearing officer and the Board found in this case, among other things, that Morabito failed

³ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

⁴ *Board of Educ. v. DiNunzio*, 602 A.2d 85, 94 (Del. Super.), *aff'd*, 584 A.2d 1228 (Del. 1990).

⁵ *Board of Educ. v. Shockley*, 155 A.2d 323 (Del. 1959).

⁶ DEL. CODE ANN. tit. 14, § 1411 (2007). Section 1411 provides, in part, that termination of a teacher at the end of the school year may be done for one or more of the following reasons: "[i]mmorality, misconduct in office, incompetency, disloyalty, neglect of duty, willful and persistent insubordination, a reduction in the number of teachers required as a result of decreased enrollment or a decrease in education services."

⁷ *Wilson v. Board of Educ.*, 2010 A.2d 3530018 (Del. Sept. 13, 2010).

to routinely prepare and deliver detailed lesson plans; that he did not demonstrate adequate knowledge of his students' developmental characteristics, knowledge and skills and that he did not adequately engage and motivate his students by delivering adequately paced instruction; that he did use a repertoire of instructional strategies or deliver differentiated instruction based on students' capabilities; that he did not adequately encourage his students who were struggling and did not maintain healthy two-way communication with families about students' progress; and that he failed to maintain adequate disciplinary records and keep the school administration timely apprised of classroom incidents. These findings are amply supported in the record by testimony and documentary evidence. Accordingly, we find substantial evidence in the record to support the Board's conclusion that Morabito had failed to do things that were "required to be done in connection with [his] employment."⁸

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁸ *See id.*